

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

OMAR BROCKMAN,

Plaintiff,

v.

KRIS TASKILA, et al.,

Defendants.

Case No. 2:23-cv-55

HON. JANE M. BECKERING

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiff's incoming mail. The two Defendants who remain in this case—Mail Clerk Tracie Hill and Prison Counselor J. Gibson—rejected “The Employer’s Legal Handbook” because the book contained a tax form that could be used to file false or fraudulent paperwork, and Plaintiff alleged against a First Amendment claim against them. Defendants moved for summary judgment, and the matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant the motion and dismiss this case. The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation, to which Defendants filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge determined that “there exists no genuine issue of material fact that The Employer’s Legal Handbook contains a tax form” (R&R, ECF No. 46 at PageID.479). The Magistrate Judge concluded that (1) Defendants’ decision to restrict Plaintiff’s access to the book did not violate his First Amendment rights (R&R, ECF No. 46 at PageID.480); (2) Defendants are entitled to qualified immunity from liability (*id.* at PageID.483); and (3) Plaintiff’s claims against them in their official capacity for monetary damages are properly dismissed in accordance with the Eleventh Amendment (*id.* at PageID.484).

In his objections, Plaintiff first argues that the Magistrate Judge erred in failing to ensure that the alleged “photocopy of the page of the book containing the tax form [is] actually real” (Pl. Obj., ECF No. 48 at PageID.492–494). Second, Plaintiff argues that “Defendants’ belying of the book[’s] contents” gives rise to a “genuine dispute of material fact as to whether [D]efendants deprived [him] of his first amendment rights to receive mail ... for purposes of qualified immunity” (*id.* at PageID.495). Plaintiff expressly does not dispute the Magistrate Judge’s Eleventh Amendment analysis. *See id.* at PageID.496.

Plaintiff’s objections are properly denied.

As the Magistrate Judge noted, an objection to evidence submitted in support of a motion for summary judgment may be raised if the evidence “cannot be presented in a form that would be admissible in evidence” (R&R, ECF No. 46 at PageID.475 n.2, citing FED. R. CIV. P. 72 56(c)(2)). Here, Defendants presented a photocopy of the tax form contained within the book that was rejected (ECF No. 40-2 at PageID.383). Plaintiff presented no evidence that the photocopy could *not* be authenticated. And, as Defendants point out in their response (Resp., ECF No. 51 at PageID.508), the photocopy of the form at issue can be presented in a form admissible in evidence where Defendant Hill can testify that the photocopy is directly from the book, or a records

custodian can testify that the document containing the photocopy is a record of regularly conducted activity. In short, Plaintiff's argument fails to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 48) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 46) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 39) is GRANTED.

Dated: April 30, 2025

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge